

REMARKS

Claims 99-115 are pending. Claims 1-98 have been cancelled without prejudice. Applicants reserve the right to prosecute subject matter withdrawn from consideration by cancellation in one or more continuation, continuation-in-part, or divisional applications.

THE RESTRICTION REQUIREMENT

In the Official Action, restriction under 35 U.S.C. §121 is required to one of the twelve groups of inventions proposed by the Examiner. The Examiner contends that the inventions of Groups I through XII are distinct.

In order to be fully responsive, Applicants provisionally elect, with traverse, the invention of Group III, claims 99-106 to prosecute in the present application without prejudice to prosecution of the subject matter of the non-elected Groups and sequences in subsequent applications.

As an initial matter, the Examiner contends that inventions I-XII lack a unifying special technical feature, and that “[s]ince the claimed subject matter was known from the prior art document of International Application WO 99/64452, the subject matter of claims 99-100 are not so linked as to form a single general inventive concept...” (Office Action, page 3). Applicants respectfully traverse, and point out that the pending claims of the instant invention relate to claudin-18A1 and claudin-18A2, and *not* to the GPR35A polypeptides that the Examiner indicates are taught in WO 99/64452. The subject matter of pending claims 99-115 *are* linked by a new and inventive common special technical feature. The inventive step of the instant invention relates to an appreciation that the expression of certain molecules are increased in a diseased state.

With respect to the Examiner’s division of the detection of nucleic acids and polypeptides into different Groups and the reasons stated therefore, Applicants respectfully traverse. Applicants have provisionally elected Group III directed to methods of diagnosing a disease comprising detecting a polypeptide tumor-associated antigen, wherein said antigen has a sequence encoded by SEQ ID NO: 7. Applicants contend that detection of the nucleic acid encoding the same tumor-associated antigen could also be searched without a serious burden to the Examiner. The inventive step concerns an appreciation that the expression of certain molecules are increased in a diseased state. The expression of both of the nucleic acid

and the polypeptide it encodes are thus elevated. Example 4 in the instant specification demonstrates that the splice variants of claudin-18A are elevated in both as nucleic acids (SEQ ID NOS:7 and 117) and polypeptides (SEQ ID NOS:16 and 118) in the disease state.

Applicants further contend that SEQ ID NOS:16 and 118 could be searched together and not pose a serious burden to the Examiner. The above-mentioned sequences are both splice variants of the claudin-18A polypeptide and thus encoded by the same gene. The splice variants share an identical C-terminal extracellular domain and intracellular domain and differ only in the N-terminal extracellular domain. Consequently, only the N terminal amino acid residues of SEQ ID NOS:16 and 118, respectively, differ. Clearly one search could easily be designed that would encompass the sequence of both of the splice variants. As such, Applicants request that Groups I, II, and IV-XII are joined with provisionally elected Group III and are examined together.

The M.P.E.P. § 803 (Eighth Edition, Incorporating Revision No. 2, May 2004) states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Thus, in view of M.P.E.P. § 803, the subject matter of the claims in Groups I-XII as they relate to SEQ ID NOS:7, 16, 117, and 118 should be searched and examined in the subject application. Accordingly, Applicants respectfully request that the Restriction Requirement Under 35 U.S.C. § 121 be modified and the instant claims be examined in one application.

CONCLUSION

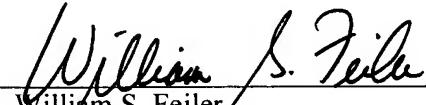
It is believed that the elected claims are in condition for allowance. Early and favorable action by the Examiner is earnestly requested.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 13-4500, Order No. 4883-0001. A duplicate copy of this sheet is attached.

Respectfully submitted,
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